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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,681

03/15/2004

Hirokazu Annoura

47259-0454

8653

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7590

10/11/2006

DRINKER BIDDLE & REATH (DC)

1500 K STREET, N.W.

SUITE 1100

WASHINGTON, DC 20005-1209

EXAMINER

DESAI, RITA J

ART UNIT

PAPER NUMBER

1625

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1625

DETAILED ACTION

Applicants have elected Group II of the restriction.

Claims 11-19.

Claims 13 and 17 have been cancelled.

Pending claims are 11, 12, 14-16 and 19.

Double patenting rejection.

The rejection of the claims 11, 12, 14-16 and 19 still stands. Applicants argue that 10/331,508 is the parent case is not correct. US 6455549 case is issued from application # 09/043563.

The Bib data indicates the parent to be 10/196362, which is a divisional of 09/043563.

The parent claims were of different scope, however there is still overlapping subject matter.

The rejection still stands.

The rejection over US 6838470 still stands. This was originally application number 10/331,508 which is not the parent but has similar and obvious modifications of the subject matter.

While homology is considered to be present, even if true "homology" is not present, such does not defeat the prima facie case of obviousness raised by the art. In *reDruey et al* 50 CCPA 1538, 319 F. 2d 237, 138 USPQ 39 wherein Judge Worley, delivering the Courts's opinion stated:

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“We need not decide here whether the compounds in question are properly labeled homologues. It appears to us from the authorities cited by the solicitor and appellants that the term homologue is used by chemists at times in a broad sense, and at other times in a narrow or strict sense. The name used to designate the relationship between the related compound is not necessarily controlling; it is the closeness of that relationship which is indicative of the obviousness or unobviousness of the new compound.” 50 CCPA 1541.

Conclusion

Claims 11, 12, 14-16 and 19 are rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rita J. Desai
Primary Examiner
Art Unit 1625

R.D.
September 29, 2006

RDesai
9/29/06